

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

LAURA SAMPSON, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-cv-10284-RMB-SAK

**STIPULATION AND
ORDER**

WHEREAS, service of process of the Class Action Complaint was effectuated on April 29, 2021;

WHEREAS, pursuant to Stipulation and Order entered on July 15, 2021 [ECF 26], Plaintiffs filed their First Amended Complaint (“FAC”) on August 16, 2021 [ECF 28], and Defendant Subaru of America Inc.’s (“SOA”) response was due by October 8, 2021 [ECF 26];

WHEREAS, on October 7, 2021, in accordance with this Court’s Rules and Procedures, § I.A, counsel for Defendant SOA filed a Letter requesting a pre-motion conference for permission to file a Rule 12 motion to dismiss the FAC [ECF 30];

WHEREAS, pursuant to the Court’s Orders entered on October 14, 2021 [ECF 33] and November 4, 2021 [ECF 38], Plaintiffs and Defendant SOA were afforded additional time to undertake a “meet and confer” process in an effort to resolve or narrow the issues raised in SOA’s Letter;

WHEREAS, as a result of the Parties' meet and confer process, and to avoid the necessity of SOA filing a Rule 12 motion to dismiss the FAC, Plaintiffs and SOA have agreed that Plaintiffs shall dismiss with prejudice various claims that are asserted in the FAC, as set forth below; that Plaintiffs shall file a Second Amended Complaint that reflects said dismissal of claims and adds three additional named Plaintiffs with respect to certain claims also set forth below; and that SOA, without waiver, limitation or prejudice of its rights to contest, and assert any and all defenses and/or positions with respect to, any allegations and claims in this action as set forth below, shall file an Answer to the SAC on or before January 17, 2022 in lieu of a Rule 12 motion to dismiss;

WHEREAS, no trial date has been set and no scheduling order has yet been entered in this action; and

WHEREAS, this agreement serves the interest of judicial economy by obviating the need for a Rule 12 motion to dismiss the FAC;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs and Defendant SOA, through their respective counsel, and subject to the approval of the Court, that:

1. The following claims asserted by Plaintiffs are hereby dismissed with prejudice as against all Defendants: (i) all claims of violation of the Magnuson-Moss Warranty Act (Counts 3 and 6), (ii) all claims of breach of express warranty (Counts

7, 10, 14, 18, 21, 24, 27, 30, 33, and 36), (iii) all claims of breach of implied warranty claims under Illinois, New York, Wisconsin, and Florida law (Counts 8, 11, 15, 22, and 25; Plaintiffs Laura and James Sampson, Anthony Ventura, Joanne Fulgieri Ventura, David and Lisa Harding, Shirley Reinhard and Barbara Miller, respectively), (iv) all claims of unjust enrichment and other equitable relief (Counts 2 and 5, and to the extent that equitable relief is sought in Counts 9, 12, 13, 16, 17, 20, 23, 26, 29, 32, 35, and 38), (v) all claims of fraud by omission under Texas and Wisconsin law (Count 1, to the extent premised on Texas and Wisconsin law on behalf of Plaintiffs Darrin DeGrande, Jana DeGrand and Shirley Reinhard), (vi) all claims brought under the Texas Deceptive Trade Practices Act and the Wisconsin Deceptive Trade Practices Act (Counts 23, 35, and 38); and (vii) the claims of any named Plaintiff that is not the record owner or lessee of a subject vehicle.

2. On or before November 29, 2021, Plaintiffs shall file a Second Amended Complaint (“SAC”) that (i) reflects their dismissal with prejudice of the above-referenced claims that were asserted in the FAC, (ii) adds three additional named plaintiffs, Danielle Lovelady Ryan, Robert McLaughlin and Jack Asbury, whose claims shall be limited to breach of implied warranty under the California Song-Beverly Act, legal damages under the California Consumers Legal Remedies Act, and a claim under the North Carolina Unfair Trade Practices Act, and (iii) does

not assert claims on behalf of any person or entity that is not a record owner or lessee of a subject vehicle;

3. SOA shall file its Answer to Plaintiffs' Second Amended Complaint on or before January 17, 2022;

4. SOA's filing of an Answer in lieu of a Motion to Dismiss shall not, in any way, waive, limit or prejudice SOA's rights to contest, and assert any and all defenses and positions with respect to, the allegations and claims asserted in the FAC and SAC, including any putative class claims, or to otherwise assert any and all defenses that may be available in this action.

Dated: November 11, 2021

Respectfully submitted,

/s/ Homer B. Ramsey

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*Attorneys for Plaintiffs and Proposed
Classes*

SO ORDERED:



Honorable Renée Marie Bumb,
United States District Judge

Dated: November 2, 2021